BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

STANTON A. SMITH Claimant	)	
VS.	)	
SPHERION CORPORATION Respondent	)	Docket Nos. 1,016,412 and 1,020,793
AND	)	
AMERICAN HOME ASSURANCE CO. Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Claimant and respondent and its insurance carrier (respondent) requested review of the July 2, 2008, Award entered by Administrative Law Judge Robert H. Foerschler. The Board heard oral argument on October 7, 2008. John G. O'Connor, of Kansas City, Kansas, appeared for claimant. Thomas R. Hill, of Overland Park, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) made a finding that the claim in Docket No. 1,020,793 was merged into the claim in Docket No. 1,016,412. Accordingly, only one award was entered in both docketed cases. During oral argument to the Board, the parties agreed that both accidents should be combined and only one award entered, with that being in Docket No. 1,016,412.

The ALJ concluded that claimant was not permanently totally disabled. Further, the ALJ concluded that Dr. Fernando Egea's testimony in this case was more persuasive than

that of Dr. Lowry Jones and awarded claimant a 40 percent "work" disability.[1] The ALJ also found that claimant was entitled to future medical treatment upon application pursuant to K.S.A. 2007 Supp. 44-510k.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant requests that the Board modify the award and find that claimant is permanently, totally disabled or, in the alternative, enter an award based upon a 100 percent work disability.

Respondent concedes that claimant suffered a work-related injury to his cervical spine but denies that claimant sustained a lumbar spine injury or a mild brain trauma. Respondent also argues that claimant's psychological issues result from his personal behavior, which includes drug and/or alcohol abuse and interpersonal relationship issues. Respondent argues that claimant is not entitled to a work disability and is not permanently totally disabled but should be limited to a 5 percent functional disability for impairment to his cervical spine as per Dr. Jones' rating. Further, respondent contends that claimant is not entitled to any future medical treatment.

The issues for the Board's review are:

(1) Did claimant suffer a low back injury or a mild brain trauma in addition to the cervical injury that arose out of and in the course of his employment with respondent?

(2) Did claimant suffer a psychiatric condition as a direct result of his physical injuries?

(3) What is the nature and extent of claimant's disability?

(4) Is claimant entitled to future medical treatment?

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[1] Although the award computation section of the ALJ's Award sets out the permanent partial disability as a work disability, the language in the body of the Award indicates that the 40 percent award was for claimant's functional impairment. Although the ALJ made a finding that Dr. Egea testified that claimant could not perform 15 of the 16 tasks on Michael Dreiling's task list, he made no mention of claimant's wage loss. Dr. Egea rated claimant as having a 5 percent lumbosacral impairment, a 15 percent cervicothoracic impairment, and a 30 percent impairment for brain trauma. Those ratings combine to a 44 percent impairment to the body as a whole. There is no explanation in the Award for why the award was for 40 percent rather than 44 percent, although claimant's brief to the Board suggests the ALJ may have averaged the 5 percent functional rating of Dr. Jones with the 15 percent rating given claimant by Dr. Egea for claimant's cervical impairment, and then added that 10 percent average to Dr. Egea's 30 percent rating for claimant's brain trauma, making the total functional impairment 40 percent.

FINDINGS OF FACT

Claimant worked for respondent, a company that places temporary workers with employers. On January 9, 2004, claimant was at the J. C. Penney Distribution Center when a box fell from a conveyor belt that was 20 to 25 feet overhead. Claimant was hit on his head and fell to the ground. He does not think he lost consciousness but was dazed and shocked and felt pain. He was taken to the emergency room, where a CT of his head revealed that there was no mass, mass effect, or evidence of intracranial hemorrhage and showed claimant had a "[n]ormal CT head."[2] CT scans of claimant's cervical spine showed what appeared to be a nondisplaced laminar fracture of C5 on the right side. An MRI of the cervical spine was essentially normal, as was an x-ray of his lumbar spine. Claimant testified that he had been diagnosed with a closed head injury with questionable loss of consciousness along with the laminar fracture of C5. Claimant was given a cervical collar to use for a few weeks.

At the regular hearing, claimant testified the box that fell on him weighed upwards of 30 pounds. However, the records of the treating emergency room physician indicate that claimant said the box weighed from 3 to 10 pounds, and claimant later told Dr. Egea that the box weighed 25 pounds.

Claimant came under the care of Dr. Vito Carabetta, and was then referred to Dr. Lowry Jones, an orthopedic surgeon, who first saw him on May 18, 2004. At that time, claimant was complaining of pain in the neck and upper back. He was still wearing the cervical collar. He had tenderness from the base of his neck into his upper back. This extended down to the upper shoulder blade area. Upon examination, Dr. Jones found he had good neck flexion. His main pain was when he attempted to extend his neck or rotate it to the left side. Dr. Jones found significant that claimant had no neurologic findings. Claimant's nerve evaluation was normal and he had no evidence of muscle weakness. He had no loss of shoulder motion or upper extremity problems. X-rays of his neck did not show evidence of a fracture, although a previous CAT scan had identified a fracture, suggesting that claimant's fracture had healed.

Dr. Jones sent claimant for a functional capacity evaluation (FCE) in June 2004. He saw claimant on June 29, 2004, after the FCE had been done. Dr. Jones commented in his medical notes that he had seen claimant walking into his office holding onto a cane but not using it. He did not notice that claimant had a significant gait abnormality. Claimant told him that he was having difficulty walking and was using a cane for ambulation. Dr. Jones had not been asked to evaluate claimant's low back but agreed to give him a prescription for a cane, although he did not see any strong evidence that he needed one.

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[2] Egea Depo., Ex. 3 at 1.

Dr. Jones stated that the results of the FCE showed that claimant's performance had been inconsistent. He considered it significant that claimant did not show any evidence of an increase in his heart rate during his FCE to document effort or that he was experiencing pain or fatigue at that time. Dr. Jones found that claimant was at maximum medical improvement (MMI). He said that claimant's complaints were very subjective, but he could see no objective findings to support a need for prolonged treatment.

Claimant returned to work for respondent after being found to be at MMI. He was given a desk job and light duty. However, on July 16, 2004, while coming down some stairs, he felt a sharp pain in his back and fell down the stairs. He drove himself to the emergency room, where CT scans were taken of his cervical and thoracic spine. Those scans were negative. A CT scan of his brain showed a probable normal examination. The scan showed that the ventricles were normal to small in size, which could be secondary to generalized brain swelling. There was no evidence of hemorrhage or hematoma.

A few days after claimant's fall, on July 27, 2004, claimant was seen by Dr. Jones. Claimant told Dr. Jones that he had been wearing his cervical collar at the time of the fall. Claimant also told Dr. Jones that he had pain and could not function or work. Dr. Jones noticed that although claimant complained of pain, his cervical motion in flexion and extension, rotational motion and lateral bending were normal. An x-ray of the cervical spine did not show any changes or abnormalities, which meant that claimant could have had a nondisplaced lamina fracture that was healed. Dr. Jones' medical note of that day indicates: "Mr. Smith is adamant about not trying to not work [*sic*], and he is requesting total disability. He has no objective neurologic findings or any evidence to support disability at all."[3] Dr. Jones also noted again that claimant's FCE did not show any consistent efforts. He ordered another CT scan of claimant's cervical spine, which showed no definite evidence of a fracture of the cervical spine.

Dr. Jones rated claimant as having a 5 percent permanent partial impairment to the body as a whole for cervicothoracic strain. He gave claimant permanent restrictions of a maximum 20-pound lifting and carrying. He was not to work above his shoulder or overhead. He was to stand as tolerated but be able to change position for pain control. He was to do no repetitive bending.

No part of Dr. Jones' restrictions or rating is based on any psychological or psychiatric diagnosis. Dr. Jones opined that claimant was having a psychiatric reaction to his injury. He did not diagnose claimant with a psychiatric medical illness but said some people's reaction to pain is somewhat of a psychological over-treatment. He noted that claimant did not come out of his neck collar for four months, which could cause stiffness in the neck that does not go away. He said it is out of the ordinary for a person to wear a cervical collar for four months. Claimant had been placed in a cervical collar originally until

[3] Jones Depo., Ex. 5.

he could be evaluated. In a soft tissue injury, the primary time someone should be in a collar is four to six weeks. Even for a fracture, particularly a stable fracture, a doctor would not want a patient in one longer than that. He explained that when wearing a collar, the patient will develop tightening or soft tissue tightening around the joint spaces and then they get remarkably stiff, which is what happened with claimant. He wanted claimant to get out of the collar and start to move his neck and the soft tissues, but claimant reacted to pain by putting on the collar.

Dr. Fernando Egea is a neurologist who has also had residency training in neurosurgery and psychiatry. He is board certified in evaluating medical disabilities. He practices both neurology and psychiatry. His clinical neurology practice involves patients with brain trauma; head trauma; strokes and brain tumors; epilepsy; headaches; injuries or diseases of the spinal cord; and cervical, lumbar, thoracic, and peripheral nerve damage or diseases of the nerves. His psychiatry practice involves all types of patients, including those with neurosis, psychosis, schizophrenia, depression, and bipolar disorder, as well as traumatic brain syndrome, post-concussion syndrome, and traumatic stress disorder. Dr. Egea evaluated claimant on August 13, 2007, at the request of claimant's attorney.

Dr. Egea reviewed claimant's prior medical treatment records and performed a medical and psychological evaluation of claimant. The mental status examination consisted of checking claimant's memory, ability to function, cognitive functions, and intelligence. He obtained a history from claimant of the medical problems he has had since January 9, 2004. Claimant told him he had injured his head and cervical, thoracic and lumbar spine when a 25-pound box fell from a conveyor and struck him on the head. Claimant said he was dizzy, confused and disoriented for a short period of time and was not sure if he lost consciousness. He was taken to the emergency room of Overland Park Regional Medical Center and found to have a fracture of the C-5 vertebra.

Claimant complained to Dr. Egea of problems with attention, concentration, focus, and memory. He also complained of pain in his cervical spine and low back. The pain in his cervical spine radiated to his shoulders and upper extremities. He complained of headaches. Dr. Egea stated that during claimant's mental status examination, he had problems with attention and concentration. His mood and affect were depressed, and his verbal recall was poor. He was taking psychotropic medication. Upon examination of claimant's cervical spine, Dr. Egea found claimant had pain on palpation of several areas over the cervical spine. He had limited range of motion of the neck. Upon examination of claimant's lumbar spine, Dr. Egea found pain at palpation of his spinous process and the sacroiliac joint was tender. Claimant had limited range of motion of the lumbar spine. Straight leg raising tests were positive on both sides.

Dr. Egea diagnosed claimant with mild traumatic brain syndrome. Depression is part of the syndrome. In claimant's case, Dr. Egea believed that his mental status and depression were reflective of a combination of physical brain injury and a psychiatric

reaction to the injuries. He opined that claimant's mild traumatic brain syndrome is attributable to the work accident of January 2004.

In claimant's lumbar area, Dr. Egea diagnosed him with traumatic myofascitis with myofascial pain syndrome. In the cervical area, his diagnosis was traumatic myofascitis with traumatic myofascial pain syndrome and radiculopathy. Claimant had reached MMI in his cervical and lumbar spine.

Using the diagnosis related estimate (DRE) model of the AMA *Guides*,[4] Dr. Egea opined that claimant was at a Category II for his lumbosacral disability, giving him a 5 percent permanent partial impairment . For claimant's cervical injuries, Dr. Egea found that he was in Category III with a 15 percent permanent partial impairment to the body as a whole. He rated claimant as having a 30 percent permanent partial impairment to the body as a whole for his brain trauma. Combining those ratings, he found that claimant had a permanent partial impairment of 44 percent.

Dr. Egea was in accord with Dr. Jones' restrictions of limiting claimant's lifting or carrying to 20 pounds, no overhead work or work above his shoulders, and no repetitive bending. He reviewed the task list prepared by Michael Dreiling. Of the 16 tasks on that list, Dr. Egea opined that claimant was unable to perform 15 for a task loss of 94 percent. The only task claimant could perform was No. 16, the light duty office work that claimant performed when he returned to work after the January 2004 injury. Accordingly, when the task claimant performed after his date of accident is removed, Dr. Egea's task loss opinion is 100 percent of the tasks claimant performed during the relevant 15-year-period preceding his date of accident.

Dr. Egea had reviewed and respondent entered into evidence, without objection, claimant's medical records, including the records from the Kansas University Medical Center (KUMC), Dr. Pir Shah, and the Wyandot Mental Health Center (Wyandot). The records from KUMC indicate that claimant presented for treatment on June 10, 2005. At that time, he was complaining of headache and depression. He stated that he was stressed and that his girlfriend would not talk to him and threw him out. He reported a history of alcohol use every day for weeks, marijuana use, and use of crack cocaine once a day for years. Claimant returned to KUMC in July 2005, at which time he was inebriated and said he had used cocaine the week before. He returned again on October 11, 2005, complaining of depression and stress concerning his relationship with his girlfriend. He also complained of migraine headaches and difficulty sleeping. He denied using drugs during the past year. KUMC recommended he seek treatment with Wyandot.

[4] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

A report from Wyandot dated October 13, 2005, showed that claimant had appeared intoxicated the day before. He reported thoughts of suicide and complained of migraine headaches and relationship difficulties. He also complained of memory difficulty and loss of interest in activities. He denied use of drugs. He said he drank a lot of alcohol but denied he had an alcohol problem. Claimant was using a cane and reported he had fallen at home and injured his back. Records from Wyandot show that claimant continued to seek treatment through February 16, 2007.

Michael Dreiling, a vocational rehabilitation consultant, met with claimant on February 11, 2008, at the request of claimant's attorney. He considered claimant to be a poor historian. He had problems being specific about the dates he worked in his different jobs and difficulty recalling his different jobs. He prepared a task list for the 15-year period before claimant's second injury of July 2004, so the list included the light duty work he did after the January 2004 injury. He was able to identify 16 job tasks claimant performed in that 15-year period.

Claimant is a high school graduate but has no further academic or vocational training. Claimant was not working at the time he was evaluated by Mr. Dreiling. He had not worked after his second accident in July 2004. Taking into account claimant's work history and medical restrictions, Mr. Dreiling did not believe he was employable at the time he saw him. In reviewing Dr. Jones' statement that claimant "was adamant about not trying to not work and he is requesting total disability," Mr. Dreiling said it suggested that claimant is not a realistic candidate to refer to vocational rehabilitation. The notations in claimant's FCE that claimant did not show consistent efforts suggested to Mr. Dreiling that claimant did not put forth reliable effort.

PRINCIPLES OF LAW

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[5] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[6]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the

[5] K.S.A. 2007 Supp. 44-501(a).

[6] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

> rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[7]

K.S.A. 2007 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2007 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510c(a)(2) states:

> Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

In *Wardlow*[8], the claimant, an ex-truck driver, was physically impaired and lacked transferrable job skills making him essentially unemployable as he was capable of performing only part-time sedentary work.

The court, in *Wardlow*, looked at all the circumstances surrounding his condition including the serious and permanent nature of the injuries, the extremely limited physical chores he could perform, his lack of training, his being in constant pain and the necessity of constantly changing body positions as being pertinent to the decision whether the claimant was permanently totally disabled.[9]

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[7] *Id.* at 278.

[8] *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

[9] *Id.* at 114-15.

K.S.A. 44-510e(a) states in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

In *Foulk*,[10] the Kansas Court of Appeals held:

> The legislature clearly intended for a worker not to receive compensation where the worker was still capable of earning nearly the same wage. Further, it would be unreasonable for this court to conclude that the legislature intended to encourage workers to merely sit at home, refuse to work, and take advantage of the workers compensation system.

Later, in *Copeland*,[11] the Court of Appeals stated:

> In attempting to harmonize the language of K.S.A. 44-510e(a) with the principles of *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), the factfinder must first make a finding of whether a claimant has made a good faith effort to find appropriate employment. If such a finding is made, the difference in pre- and post-injury wages can be made based on the actual wages.

The good faith of an employee's efforts to find or retain appropriate employment is determined on a case-by-case basis.[12]

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[10] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 284, 887 P.2d 140, (1994), *rev. denied* 257 Kan. 1091 (1995).

[11] *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, Syl. ¶ 7, 944 P.2d 179 (1997).

[12] *Parsons v. Seaboard Farms, Inc.*, 27 Kan. App. 2d 843, Syl. ¶ 3, 9 P.3d 591 (2000).

The Kansas Court of Appeals in *Watson*[13] held the failure to make a good faith effort to find appropriate employment does not automatically limit the permanent partial general disability to the functional impairment rating. Instead, the court reiterated that when a worker failed to make a good faith effort to find employment, the post-injury wage for the permanent partial general disability formula should be based upon all the evidence, including expert testimony concerning the capacity to earn wages.

> In determining an appropriate disability award, if a finding is made that the claimant has not made a good faith effort to find employment, the factfinder must determine an appropriate post-injury wage based on all the evidence before it. This can include expert testimony concerning the capacity to earn wages.[14]

Despite clear signals from recent decisions of the Kansas Supreme Court that the literal language of the statutes should be applied and followed whenever possible,[15] there has yet to be a specific repudiation of the good faith requirement by the Supreme Court. Absent an appellate court decision overturning *Copeland* and its progeny, the Board is compelled by the doctrine of *stare decisis* to follow those precedents. Consequently, the Board must look to whether claimant demonstrated a good faith effort post injury to perform the accommodated job with respondent and, thereafter, to find appropriate employment.

K.S.A. 2007 Supp. 44-510k(a) states in part:

> At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters.

ANALYSIS

The records documenting claimant's drug and alcohol abuse certainly raise concerns about not only the cause of his symptoms and complaints, but also the claimant's

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[13] *Watson v. Johnson Controls, Inc.*, 29 Kan. App. 2d 1078, 36 P.3d 323 (2001).

[14] *Id.* at Syl. ¶ 4.

[15] See *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007), and *Graham v. Dokter Trucking Group*, 284 Kan. 547, 161 P.3d 695 (2007).

credibility in general. Nevertheless, the fact that claimant sustained some degree of personal injury by accident at work is not disputed and the record lacks any opinion based upon an adequate foundation from a psychiatrist or other medical expert relating claimant's depression and other conditions to anything other than the accident at work. The only such expert whose opinion is based upon a complete history of the accident and an understanding of claimant's subsequent medical treatment is that of Dr. Egea. Respondent's cross-examination of Dr. Egea yielded no change in the doctor's opinions. Respondent produced no psychiatric expert of its own, nor any contrary opinion from any physician who had been provided with a complete medical history or all of the relevant information concerning claimant's accident. Dr. Jones' opinions concerned claimant's orthopedic problems. Although Dr. Jones believed claimant was having a psychiatric reaction to his injury, he did not otherwise address claimant's psychiatric issues or attempt to diagnose any conditions resulting from any brain injury. As such, Dr. Egea's conclusion that claimant suffers from traumatic brain syndrome is uncontradicted.

Dr. Egea adopted the work restrictions recommended by Dr. Jones. Those restrictions, however, were based upon claimant's physical injury to his cervical area. Dr. Egea did not say that claimant's psychiatric condition made claimant unable to engage in substantial gainful employment, but the results of his cognitive function and mental status testing of claimant put claimant's ability to be productive in an employment setting in serious doubt. Claimant's opinion that he cannot work is given little credence. However, claimant's vocational expert, Mr. Dreiling, expressed a similar opinion. Even the restrictions given by Dr. Jones for claimant's cervical injury result in the elimination of 100 percent of claimant's former job tasks. And claimant has few, if any, transferable job skills. He cannot type and cannot operate a personal computer. Taking this into consideration, together with the effects of the brain trauma and psychiatric condition, the Board finds claimant has been rendered essentially and realistically unemployable as a direct result of his work-related injury.

Claimant is in need of ongoing medical treatment, including psychiatric care, medication checks, and pain management, which respondent is ordered to provide.

CONCLUSION

Claimant suffered personal injuries to the brain, neck, upper and low back, as well as psychiatric injury, as a direct result of his January 9, 2004, accident at work. He is entitled to an award of permanent total disability compensation and medical treatment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated July 2, 2008, is modified to find that claimant is permanently totally disabled.

Claimant is entitled to 24.57 weeks temporary total disability compensation at the rate of $206.68 per week or $5,078.13, followed by permanent total disability compensation at the rate of $206.68 per week not to exceed $125,000 for a permanent total general body disability.

As of October 17, 2008, there would be due and owing to the claimant 24.57 weeks of temporary total disability compensation at the rate of $206.68 per week in the sum of $5,078.13, plus 224.43 weeks of permanent total disability compensation at the rate of $206.68 per week in the sum of $46,385.19, for a total due and owing of $51,463.32, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of $73,536.68 shall be paid at $206.68 per week until fully paid or until further order of the Director.

IT IS SO ORDERED.

Dated this _____ day of October, 2008.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John G. O'Connor, Attorney for Claimant
Thomas R. Hill, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Marcia Yates Roberts, Administrative Law Judge